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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2865 OF 1996

New Era Fabrics Pvt. Ltd. ... Petitioner

V/s

Triveni Ram Sahadev Yadav & anr. ... Respondents

Mr. S. Shetty i/by M.M. Vashi for the petitioner.

Mr. P.M. Mokashi for the respondent No.1.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 7TH AUGUST, 2007.

P.C.:

1. The petition challenges the order of the Labour Court dated 30.3.1996 granting reinstatement with continuity of service and full back wages to the respondent No.1 workman. The petition was heard finally on 29.6.2004. In the meantime, the respondent workman had already been reinstated by the petitioners, pursuant to the interim orders of this Court. A statement was made by the counsel appearing for the petitioners at that stage, that the petitioners would continue to employ the workman. The issue of payment of back wages and continuity of service was then decided. Respondent No.1 was held to be in continuous service from 1983

onwards. As regards the back wages, the petitioners were directed to pay an amount of Rs.1,00,000/- towards the back wages payable to the workman. Aggrieved by this decision, the petitioners approached the Division Bench of this Court. The Division Bench has remanded the petition by directing thus -

> "1. The judgment dated 29.6.2004 is maintained save and except paragraph 7 thereof.
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> 2. Paragraph 7 of the aforesaid judgment dated 29.6.2004 is set aside and Writ Petition No. 2865 of 1996 to the extent of back wages is restored and remitted back to the learned single Judge for fresh consideration."

2. Thus, the question today is, whether the respondent No.1 workman is entitled to any back wages. Several judgments have been cited by both parties to this litigation governing the principles of awarding back wages.

3. In the above back ground, the advocate for the respondent No.1 workman has submitted that, in a similar case, the Supreme Court had directed the employer to pay 50% of the back wages.

4. There is a dispute as to whether the workman was entitled to Rs.16.50 per day or the minimum wages payable at that time. There is also a dispute as to whether the workman in fact earned during the period he was out of service with the petitioner. All these issues can be decided by the Labour Court more effectively. Hence the following order :

O R D E R

(i) The Complaint (ULP) No. 104 of 1986 is remanded to the Labour Court only to decide whether the respondent workman is entitled to back wages and the quantum.

(ii) The Labour Court will consider this issue in the light of the case law, bearing in mind the fact that the respondent No.1 workman has not pleaded in his complaint that he was not gainfully employed after his services were terminated.

(iii) The Labour Court will permit parties to lead evidence on the question of back wages.

(iv) The Labour Court shall decide the issue within three months from today.

5. Complaint remanded for a decision only in respect of back wages.

6. Petition disposed of accordingly.

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